Ontario Provincial Courts Committee

ANNUAL REPORT

1983-84

April 2, 1984

The Honourable John Black Aird, O.C., Q.C., B.A., LL.D.
Lieutenant Governor of Ontario
Queen's Park
TORONTO, Ontario
M7A 1A1

May it please your Honour:

Pursuant to section 35 of the Provincial Courts Act, the Ontario Provincial Courts Committee has the honour to present to the Lieutenant Governor in Council its annual report for the period April 1, 1983 to March 31, 1984.

Yours very truly,

Alan R. Marchment, F.C.A.
Chairman, Ontario Provincial
Courts Committee

ONTARIO PROVINCIAL COURTS COMMITTEE

Annual Report 1983-84

The Ontario Provincial Courts Committee was first established by Order-in-Council on March 5, 1980. During the period April 1, 1983 to March 31, 1984, the Committee consisted of:

Chairman:	Alan R. Marchment, F.C.A. President and Chairman of the Board Guaranty Trust Company of Canada
Judges' Nominee:	Edward L. Greenspan, Q.C. Barrister and Solicitor
Government Nominee:	Robert D. Carman Secretary Management Board of Cabinet

In December 1983, at the request of the Committee, the Provincial Courts Act was amended to provide the Committee with a statutory foundation. Section 35 of the Provincial Courts Act now provides that it is the function of the Ontario Provincial Courts Committee to inquire into and make recommendations to the Lieutenant Governor in Council respecting any matter relating to the remuneration, allowances and benefits of provincial judges. The Act also requires recommendations of the Committee and its annual reports to be tabled in the Legislative Assembly. The provisions of section 35 of the Provincial Courts Act have been incorporated in Bill 100, the Courts of Justice Act, currently being considered by the Legislative Assembly.

During the period April 1, 1983 to March 31, 1984, most of the Ontario Provincial Courts Committee's activity was directed to the development of recommendations with respect to a new pension plan for provincial judges. This process began in June 1982, when the Committee met with representatives of the Provincial Judges Association (Criminal Division), the Ontario Family Court Judges Association and the Provincial Court Judges Association of Ontario (Civil Division) and received a detailed submission on the pension issue from Mr. Paul French, the solicitor for the Provincial Judges Association (Criminal Division) and the Ontario Family Court Judges Association. At that time, the judges requested an opportunity to make a further submission to the Committee on the independence of the judiciary and its relationship to the pension issue. That submission was received in November 1982 at a similar meeting.

As the Committee proceeded with the development of its proposals, a great many very complicated issues arose. For this reason, the Committee considered it desirable to consult with the judges' representatives on several occasions. A number of meetings with Mr. French were held in the spring of 1983 for this purpose.

In July 1983, the Committee met with the Chief Judge of the Provincial Courts (Criminal Division), the Chief Judge of the Provincial Courts (Family Division) and the Senior Judge of the Provincial Court (Civil Division) to discuss how a new pension plan might affect the responsibilities of their office.

In October 1983, the Committee met with representatives of the Canadian Bar Association - Ontario and the Provincial Judiciary Committee of that Association to receive a submission on pension arrangements for provincially appointed judges.

Also in October 1983, the Committee met with representatives of the judges' associations and Mr. French to explain the details of an alternative retirement plan being considered by the Committee. The presentation was made by Towers, Perrin, Forster & Crosby, an independent management consulting firm requested by the Committee to provide the judges with an objective assessment of the alternative plan being considered. Following the meeting, a copy of a written commentary prepared by Towers, Perrin, Forster & Crosby was sent to every provincial judge in Ontario. The judges' associations were invited to submit their comments to the Committee.

Following receipt of comments on behalf of the judges, the Committee met again in early 1984 with Mr. French for the purpose of clarifying several matters.

On March 27, 1984, the Committee submitted its recommendations for a revised pension plan for provincial judges to the Lieutenant Governor in Council. A copy of those recommendations is attached.

In March 1984, the Committee was asked by the Attorney General to comment on a submission made by Mr. French to the Legislature's Standing Committee on Administration of Justice in respect of Bill 100, the Courts of Justice Act. A copy of the Attorney General's request and the Committee's reply is also attached.

Attach.

March 27, 1984

The Honourable John Black Aird, O.C., Q.C., B.A., LL.D.
Lieutenant Governor of Ontario
Queen's Park
TORONTO, Ontario
M7A 1A1

May it please Your Honour:

Pursuant to section 35 of the Provincial Courts Act, the Ontario Provincial Courts Committee has the honour to present to the Lieutenant Governor in Council its recommendations on the subject of a revised pension plan for the provincial court judges of Ontario.

1. Background to the Recommendation of the Committee:

You will recall that the terms of reference of the Ontario Provincial Courts Committee were first set out in an order-in-council dated March 5, 1980. While that order-in-council provided that the Ontario Provincial Courts Committee might inquire into, consider and make recommendations upon the matter of a revised judicial pension plan, it was not then contemplated that this Committee be charged with that responsibility. Rather, the Memorandum of Agreement, dated December 13, 1979, between the government and the judges provided in part that:

> "It is understood and agreed that the Royal Commission on the Status of Pensions in Ontario will treat the judges as a separate entity, and considerations and recommendations made thereto will be expedited by the government in the implementation of a new judicial pension plan for judges. The new plan will cover all judges that are active as of October 1, 1979."

The Royal Commission on the Status of Pensions in Ontario had been created by order-in-council, dated April 20, 1977. Its general terms of reference were to examine the terms and conditions of existing retirement pension plans in Ontario and to make such recommendations in relation to them as the Commission deemed appropriate. The Royal Commission on the Status of Pensions in Ontario was requested in early 1980 by the Attorney General to consider and make recommendations concerning a revised pension plan for the provincial court judges.

In Part VI of the Report of the Royal Commission, released in 1980, it considered the existing

pension plan for provincial court judges and concluded that the independence of the judiciary required the creation of a pension plan for the provincial court judges separate from that of the Ontario civil service. However, the Royal Commission did not deem its function to include a recommendation concerning details of a revised pension plan for the provincial court judges. The Royal Commission left the precise terms to be agreed upon between the judges and the government and the Legislature.

Accordingly, in 1982, the Ontario Provincial Courts Committee began its consideration of the precise terms that would be appropriate for a revised pension plan for provincial court judges. During its consideration of this issue, the Committee has met on several occasions with members of the judges' associations and, on numerous other occasions, with the solicitor representing the judges' associations. The recommendations we are proposing have been the subject of exhaustive consideration.

2. Considerations of the Committee:

(a) Applicable Principles

There are approximately 230 judges presiding in the three divisions of the provincial courts. Since the enactment of the Provincial Courts Act, in 1968, there have been tremendous changes in the jurisdiction and responsibilities of provincial court judges. The old image of a provincial magistrate is no longer relevant. The Committee noted in its recommendation to the Chairman of Management Board of January 30, 1981, the significant changes in jurisdiction and responsibility. Those changes have continued to the present, as has the increased caseload in the provincial courts. Subsequent to that recommendation of this Committee, there has been created the Provincial Court (Civil Division). While it does not yet have numbers of sitting judges comparable to the other divisions, it too is a court like the Criminal Division and the Family Division where most citizens of Ontario have their only exposure to the law in action. Having greater direct contact with the public, all divisions of the provincial courts have a critical role to perform in maintaining and enlarging public confidence in our justice system.

The Ontario Provincial Courts Committee accepts as a matter of principle that all provincial court judges hold an office to which is annexed the function of guarding the supremacy of the law. The political

organization of our society is such that the settlement of disputes between our citizens and between our government and its citizens is within a legal order prescribed as a norm for all by the Legislative Assembly, by Parliament and by the common law. In the exercise of the adjudicative function within that legal order, the provincial court judge is not a civil servant but is rather a primary officer in the judicial realm having separate and autonomous powers from those of the executive and from those of the Legislative Assembly. The Committee thus accepts that provincial court judges, being entrusted with the maintenance of the supremacy of the law, have been and are to be regarded as a separate and independent part of the Constitution providing for the organization of our society.

The Ontario Provincial Courts Committee accepts as a matter of principle that, in order to secure and maintain the independence of provincial court judges, certain institutional arrangements are required to place a judge in a position where he or she has nothing to lose by doing what is right and little to gain by doing what is wrong. In so doing, there shall, therefore, be every reason to expect that his or her best efforts will be devoted to the conscientious performance of the judicial duty. Those institutional arrangements must include generous financial arrangements for the provincial court judges in order that they may be relieved of financial distractions or temptations. The Committee accepts, as a matter of principle, that the independence of the judiciary is predicated on an assurance of adequate salary while in office and, given a system of compulsory retirement, on an assurance of an equitable provision of retirement security.

The Committee accepts that there exists a subtle but real relationship between the benefits provided by law for the judges and the quality, competence and independence of the judiciary.

The Committee had the benefit of extensive submissions concerning the opportunity of lawyers to provide for their retirement before appointment to the bench. The Committee observes that upon appointment to the bench, the new judge must immediately divest himself or herself of the whole interest in a law practice. Rather than having the opportunity to utilize the law practice for retirement funding on appointment, the experience of most new judges was quite the opposite. Tax consequences upon appointment, compounded by differing fiscal years, result in significant tax liabilities in the year of appointment that often

require the liquidation of existing pension arrangements. The Committee further observes that most judges are appointed to the bench at a period in their lives when they would expect to earn a high income, some of which could be allocated towards their future needs, notably for retirement. They forego these income expectations on appointment to the bench. The salary and retirement benefits available to judges should be sufficient to encourage highly qualified lawyers to seek appointment to the bench.

The Committee has also had the benefit of considerable actuarial analysis. The career of judges is relatively short, often less than twenty years. In order to have a funded indexed pension plan, the contribution levels that would be required would be greatly in excess of that required by any other retirement scheme, let alone the current level of judges' contributions. The Committee, therefore, accepts as a matter of principle that a revised pension plan for provincial court judges can only be actuarially sound if the government underwrites the majority of the costs of the plan.

(b) Other Studies

By order-in-council in 1964, there was created a Royal Commission to inquire into all of the laws of Ontario and to make recommendations concerning all such laws in order to safeguard the fundamental and basic rights, liberties, and freedoms of the individual from infringement by the state or any other body. The Royal Commission came to be known as the McRuer Inquiry into Civil Rights.

In early 1968, it released its report, part of which concerned the organization of the provincial courts. In its consideration of the salary arrangements attached to that office, the Royal Commission recommended that those arrangements be equated with those provided for county court judges. While no direct action was then taken with respect to a pension plan for provincial court judges, there was later enacted that year the Provincial Courts Act, 1968. It provided in part that the Lieutenant Governor in Council could make regulations providing for the benefits to which provincial court judges were entitled, including pension benefits for judges and their widows and surviving children, and for the transfer or other disposition of benefits to which persons appointed as judges were entitled under the Public Service Act or the Public Service Superannuation Act. While direct action was

still not taken with respect to a pension plan for the provincial court judges, it was obviously within the contemplation of the Legislative Assembly that there be a separate pension plan for provincial court judges.

In 1973, the Ontario Law Reform Commission considered the financial arrangements affecting provincial court judges. The Ontario Law Reform Commission recommended that the financial arrangements be commensurate with the work to be performed by the provincial court judges and that those arrangements be sufficient to encourage a large number of well-qualified, experienced persons to seek the office. The Ontario Law Reform Commission was of the opinion that the general civil service benefits covering pensions did not reflect the special considerations which ought to apply to judges. It observed that most civil service employees spend an entire career in government employment, while the average age of appointment of judges to the provincial courts was 44 years of age. While the Ontario Law Reform Commission did not favour adoption of the principle that the salaries of provincial judges be automatically equated with those of county court judges, or indeed with any other persons whose salaries were established by another government, it did recommend "that pension and disability benefits be provided by statute for provincial judges and their dependents on a non-contributory basis, as they are for federally-appointed judges".

The report of the Royal Commission on the Status of Pensions in Ontario, earlier referred to, also accepted as a matter of principle that the independence of the judiciary required the enactment of a pension plan for provincial court judges separate from that of civil servants. In formulating that recommendation, the Royal Commission considered as a comparable model the pension scheme available for retiring members of the Legislative Assembly. They supported a separate pension plan for provincial court judges as a corollary of the separation of judicial, legislative and executive powers of government.

(c) Other Submissions

The Committee had the opportunity to meet with and hear from the Chief Judge of the Provincial Courts (Criminal Division), the Chief Judge of the Provincial Courts (Family Division) and the Senior Judge of the Provincial Court (Civil Division). They eloquently expressed their concerns for the continued development of a full-time provincial court bench in order to ensure

continuity in the orderly administration of justice within the province. They were opposed, for reasons relating to the orderly administration of the courts and the continuing cultivation of a competent full-time bench, to any proposal that would result, directly or indirectly, in the creation of a part-time bench.

The Committee also had the opportunity to receive a resolution passed by the Canadian Bar Association--Ontario, and had the opportunity to hear from members of the Provincial Judiciary Committee of that Association. The Ontario branch of the Canadian Bar Association unanimously resolved that the pension arrangements for provincially appointed judges be similar in nature and quality to those pertaining to the federally appointed judges. Their resolution was that such pension arrangements contain at least the following elements:

(a) A full pension should be in the order of about two-thirds to three-quarters of full salary, and the spouse's pension should be equal to one-half of full pension.

(b) A judge should be entitled to full pension in the event of becoming unable to continue in office for medical reasons, having served ten years and having attained the age of seventy, having served fifteen years and having attained the age of sixty-five, or having served twenty years and having attained the age of sixty.

(c) Whenever a judge in good health has attained the age and years of service entitling the judge to full pension, the judge should be entitled to serve as a supernumerary judge working about one-third of the full workload of a judge receiving full remuneration and allowances up to the age of seventy-five.

(d) Other Models

The Committee had the opportunity of comparing the retirement benefits available to other provincially appointed judges, federally appointed judges and judges appointed in other countries that share a common judicial heritage with Ontario. Such a comparison may be misleading without having reference to the juris-

diction, responsibility and other elements of the total compensation provided to judges in those other jurisdictions.

However, the position of the judiciary elsewhere remains of comparative interest. The Committee notes that, notwithstanding a hierarchial system of courts within Canada, including federally appointed courts providing for differing levels of remuneration, as for example between the county courts and the Supreme Court of Ontario, and as between the Supreme Court of Ontario and the Supreme Court of Canada, the pension formula is the same for each level within the federally appointed courts. The pension formula centers around the payment of an annuity equal to two-thirds of the final remuneration payable to a judge, subject to certain age and service requirements.

The province of Prince Edward Island adopts the same two-thirds formula. In New Brunswick an annuity is payable on retirement, subject to certain age and service requirements, in an amount equal to sixty per cent of final salary. In Saskatchewan and Nova Scotia, an annuity is payable, subject to certain age and service requirements, in an amount equal to seventy per cent of the average salary of the judge in his final years in office. In British Columbia, Alberta, Manitoba, Quebec and Newfoundland, the general scheme of their respective pension systems is similar to that which currently exists in Ontario. However, the Committee notes that in the provinces of British Columbia and Quebec, the formula provides for an increased percentage per year of service over that which presently exists in Ontario.

The Legislative Assembly Retirement Allowances Act of Ontario creates a retirement system separate from that of the civil service which recognizes the special status of the members of that group. The plan is based on a percentage per year of service formula, but provides an accelerated rate per year. The unit of benefit is four per cent for the first ten years and 3.5 per cent for the next ten years up to a maximum of seventy-five per cent based on the average of the highest three years' salary. Thus, full entitlement may be achieved within twenty years. The CPP benefit is stacked. Full accrued pension benefits are payable when age and service equal fifty-five after minimum service of five years.

It is difficult to compare the pension scheme for judges in jurisdictions outside Canada with that which presently exists in Ontario because of the

different court structures. However, the Committee observes that in Australia there is an annuity payable equal to sixty per cent of current salary following ten years of service at age sixty. In the United Kingdom, there is payable an annuity equal to fifty per cent of final salary at age sixty-five after fifteen years of service. In New Zealand, an annuity is payable upon retirement equal to two-thirds of the final salary at age sixty-eight with eighteen years of service.

In the United States of America, there are many differing state schemes. Many adopt the uniform federal system which provides for a simplified retirement system. At age sixty-five with fifteen years service, or at age seventy with ten years service, a judge may elect "senior status". Thereafter, the judge no longer performs regular active service, but receives full salary, including future salary increases. This is remotely comparable to supernumerary status with respect to federally appointed judges in Canada. Alternatively, a federally appointed judge in the United States of America may "resign" at age seventy with ten years of service, and thereafter the full salary continues to be paid, but only at the rate applicable at the date of resignation.

3. Recommendations

There is no question that the matter of a revised pension plan for the provincial court judges of Ontario must be dealt with expediously on an urgent basis. In our view, a new plan should be implemented by July 1, 1984.

To that end, the Provincial Courts Committee unanimously recommends the enclosed revised pension plan. The recommended retirement plan would provide approximately seventy-five per cent of pre-retirement income when taxes, OAS and CPP are taken into account. This "replacement ratio" conforms with the intent of many of the submissions on this issue.

The Committee has been impressed by the judges' desire to avoid the creation of two classes of judges. For this reason, we wish to emphasize that our proposal would apply to all judges, regardless of whether they were appointed before or after implementation of the plan and regardless of whether they were covered by the public service plan prior to their appointment to the bench. The contribution level would be the same for all judges. To ensure fairness to the small percentage of existing judges who would receive higher benefits under

the existing plan, we have proposed that judges appointed before implementation of the plan be guaranteed an income continuity payment after retirement of not less than the benefit they would have received under the existing plan, as determined on the date they ceased to hold office.

It will be noted that our recommended retirement plan contemplates reduced service, at the individual judge's option, once certain age and full-time service requirements have been met. We would point out that this is a continuation of the current practice under which the courts avail themselves of the wisdom and experience of retired judges. We would emphasize that this does not represent the formalization of the practice of appointing practising lawyers to a part-time bench -- a practice which both the McRuer Inquiry into Civil Rights (1968) and the Ontario Law Reform Commission (1973) recommended against.

The Committee further recommends that the Inflation Restraint Act, 1982 and its successor, the Public Sector Price and Compensation Review Act, 1983, should not apply to the implementation of a new pension plan for provincial court judges. In particular, implementation of a new pension plan should not affect any salary increases that would otherwise be received by the judges.

Implementation of a revised pension plan for provincial court judges would provide a new basis for a continuing dialogue on the subject of retirement benefits. The Committee was established precisely for the purpose of providing a mechanism for such a dialogue and we fully expect that discussions concerning the pension plan, as well as all other benefits, would continue after implementation of a new plan.

With respect to the composition of the Ontario Provincial Courts Committee, the Committee recommends that judges and public servants should not be appointed to the Committee. While the appointees of the judges' associations and the government should obviously be familiar with the concerns of those who appointed them, we believe that the public's perception of the Committee's independence would be enhanced by the appointment of persons who are not members of the judiciary or the public service. We see no need to amend the legislation governing the composition of the Committee; our recommendation can be implemented by the appointment practices of the judges' associations and the government.

There is one further matter on which the Committee wishes to make a recommendation. It concerns payment of the fees and disbursements of Stephens, French & McKeown, the law firm retained by the Provincial Judges Association (Criminal Division) and the Ontario Family Court Judges Association. We recommend that the government pay one half of the fees and disbursements that are directly related to the Associations' submissions to the Ontario Provincial Courts Committee in respect of the pension issue. The pension problem was a particularly complicated and time-consuming issue. We wish to emphasize that our recommendation applies only to the pension issue and that, in future, in respect of all matters, the judges should be expected to pay the full costs of any counsel or other advisers that they choose to retain.

Yours very truly,

Alan R. Marchment, F.C.A.
Chairman

Edward L. Greenspan, Q.C.
Member

Robert D. Carman
Member

Encl.

c.c. The Honourable George McCague
The Honourable Roy McMurtry, Q.C.

RECOMMENDATION OF ONTARIO PROVINCIAL COURTS COMMITTEE RESPECTING A REVISED RETIREMENT SYSTEM FOR PROVINCIAL JUDGES

The proposed restructured retirement system for Provincial Judges in Ontario would provide for:

- full time service until at least age 65; followed by
- optional reduced service until age 75; followed by
- full retirement at up to 55% of full-time salary.

DESIGN DETAILS

1. Service Requirements

In order to qualify for the proposed restructured retirement system, a Provincial Judge would be expected to serve full-time until the following age and service requirements are met:

Age 65 with 15 years' service
Age 66 with 14 years' service
Age 67 with 13 years' service
Age 68 with 12 years' service
Age 69 with 11 years' service
Age 70 with 10 years' service

Once this basic service requirement has been fulfilled a Judge may:

- withdraw completely from service on the bench;
- reduce service to between 50 and 100% of full-time service, or
- continue in full-time service.

Judges who do not meet these service requirements will receive benefits outlined under 4 below.

Service between the ages of 65 and 69 would be subject to the annual approval of the chief Judge. Service between the ages 70 and 74 would be subject to the annual approval of the Judicial Council.

2. Compensation for Service

While serving full-time, Judges will be paid at the established current rate (i.e. $68,939 per year in 1983/4). When hours of service are reduced, salary would be prorated relative to the scheduled hours of a full-time Judge. For example, a Judge who reduces service to 60% of full-time levels would receive $41,363 in 1983/4. The same benefits as are currently in place will apply to both full and reduced service (i.e. with the exception of LTIP and life insurance - see below).

3. Retirement Income Continuity

Once the age/service conditions of the basic service requirement have been fulfilled, a Judge may retire from the bench at any time. After the age of 65, however, all service, whether full or reduced results in an increase in the retirement income continuity payment of 1% per year. That is, retirement income continuity payments will vary from 45% to 55% of full-time Judges salary depending only upon the age at which retirement takes place (see Appendix I). The more senior levels of Judges will have these percentages applied to their salaries in the same way. Should disability/chronic ill-health force a Judge to withdraw from service after fulfilling the basic service requirement (i.e. age 65 with 15 years' service, etc.), he would become eligible for the full 55% income continuity payment. Similarly, should the Judicial Council determine that a Judge who has fulfilled the basic service requirement, ought not to have been refused permission to continue service by the Chief Judge, he would also be eligible for the full 55% income continuity payment.

4. Judges Who Do Not Meet Full-Time Service Requirements

There are three situations in which a Provincial Judge would not fulfil the full time service requirements outlined in Section 1, above:

- chronic illness or disability;
- appointment after age 60;
- early termination of service.

(a) Chronic Illness or Disability

In this contingency, the Judge would be able to resort first, to six months of sick leave at full pay and subsequently to Long Term Income Protection (LTIP) - see Appendix II. All absence due to illness/disability qualifies as full-time service for the purpose of calculating the basic requirements of the restructured retirement system.

Under the proposed retirement system, at age 65 or more a Judge with full-time service of 5 or more years (including service while sick or disabled) would receive the full retirement income continuity payment if he suffers from chronic illness/disability. Judges with less than 5 years' service would receive a return of contributions to the survivors' pension plus interest.

(b) Appointment After Age 60

Those Judges appointed after age 60 would be unable to fulfil the basic service requirement. Although they would receive the reduced service salary amount as long as they are serving in that capacity, the retirement income continuity payment would be pro-rated on full retirement at age 70 as follows:

Age at Appointment	Years of Full-Time Service	Percentage of Full-Time Salary at age 70*
60 years	9 years	45%
61 years	8 years	40%
62 years	7 years	35%
63 years	6 years	30%
64 years	5 years	25%

Judges appointed after age 65 would receive only a return of contributions plus interest.

*Paralleling the design for longer service judges, the retirement income continuity payment increases by 1% per year for each year of service (full-time or reduced) between the ages of 70 and 75. Similarly, withdrawal from service prior to age 75 because of disability/chronic ill-health would result in an income continuity payment 5% of full-time Judges' salary higher than the above percentages.

(c) Early Termination of Service

For Provincial Judges with at least 15 years' service, retirement on an actuariarlly reduced basis will be permitted. The retirement income continuity payment would be derived by applying an "actuarial" reduction factor of 5% per year that the Judge's age is less than 65, to the percentage of full time salary payable at age 65. For example, a Judge with at least 15 years' service who elects to retire at age 60 would have his income continuity payment reduced by 25% (i.e. 5 times 5%). That is, his income continuity payment would be equal to 33.75% (i.e. 75% of 45%) of Judges' full time salary.

Alternatively, a Judge who withdraws from service prior to the age of 65, but after 15 years of service on the bench, could elect to wait to age 65 before beginning to receive his/her retirement income continuity payment. In this situation no "actuarial" reduction factor would be applied (i.e. the regular income continuity payment of 45% of full-time Judges' salary would be received).

A provincial Judge who voluntarily withdraws from service prior to 15 years' service would be eligible for a return of his own contributions to the survivors' pension, plus interest.

5. Survivors Benefits

Although retirement benefits will be employer-paid, Judges would be expected to contribute half the cost of the survivor's component of the plan (i.e. estimated at 5.57% of pay).

(a) Death Before Basic Service Requirement Fulfilled

The spouse and/or dependent children would receive a lump sum payment equal to 5 times salary. As is currently the situation when there is no spouse or dependent child, a judge may designate another beneficiary. This coverage is discontinued once the basic service requirement is met. It should be noted that the current flexibility to purchase additional coverage of one, two or three times salary will be continued.

(b) Death After Basic Service Requirement Fulfilled

The spouse or dependent children would receive a payment for life equal to 50% of the Judge's imputed retirement income continuity payment. This amount would be adjusted annually by the same amount as the adjustment applied to pensions under the Public Service Superannuation Act for protection against inflation. In addition, the current modest life insurance coverage will continue (i.e. $2000, in first year after basic service requirement, $1,750 in second year and $1,500 in third and subsequent years).

(c) No Eligible Survivors

There would be a return of all or part of their contribution to the survivors' pension with interest to the estate in the event that:

- the Judge is not survived by an eligible spouse and/or dependent child(ren); or
- the spouse/dependent children do not receive the full value of the contributions--i.e. in the event of the death of the spouse/dependent child(ren), or when surviving child(ren) can no longer be defined as dependent.

Note: Contributions returned would be only those attributed to the pension (i.e. 5(b) above). There could be no return of insurance premiums.

6. Application of the Proposed Plan

(a) Judges Active on October 1, 1979

Pursuant to the Memorandum of Agreement between the Civil Service Commission and Management Board of the Government of Ontario and the Salaries and Pension Committee of the Provincial Court (Criminal Division) and Provincial Court (Family Division), the new plan would apply to all Judges in active service on or after October 1, 1979.

On the recommendation of the Chief Judge, Judges who have retired in the interim would be eligible for reduced service if they meet the requirements.

(b) Judges Retired Before October 1, 1979

Pensions for Judges who retired prior to October 1, 1979, will be adjusted to 45% of final pay indexed by Superannuation Adjustment Benefits Act increases in the interim (i.e. where current pensions are lower than this amount).

7. Guarantee

All Provincial Judges who are active on the effective date of the new plan, together with all Judges who have retired since October 1, 1979, will be guaranteed a retirement income continuity payment which is the greater of that calculated under the PSSF or that calculated in accordance with the new plan.

8. New Judges

Membership in the new plan would be mandatory for all Judges appointed after the effective date of the new plan.

9. Termination of Service in the Public Interest

In the event of termination of service in the public interest, the Judge would receive either a return of contributions to the survivors' pension or an income continuity payment, depending on length of service. For any Judge not otherwise entitled to an income continuity payment, the Lieutenant-Governor-in-Council would have the discretion to make special additional provisions should the circumstances warrant.

10. Interest on Refunds

In accordance with the recommendation of the Select Committee on Pensions (Ontario) the rate of interest paid on refunds will be calculated at 1% below the annualized rate paid by Canadian chartered banks on non-chequing accounts, compounded annually.

11. Refund of SAF Contributions

All contributions made by active judges to the Superannuation Adjustment Fund on the effective date of the new plan will be refunded. Individual Judges will then have the option of sheltering this refund from income taxes by depositing it in their respective RRSPs.

12. Transitional Arrangements for Reduced Service

Under current arrangements, a few Judges are receiving both a PSSF pension and per diem remuneration for reduced service. It is proposed that such Judges would be permitted to continue to do so until they fully retire from the bench or switch to the new system. Until they retire/switch, however, no adjustment would be made to their pensions.

APPENDIX I

EARLY WITHDRAWAL FROM PART-TIME SERVICE

The following percentages of full time salary would be used to calculate the income continuity payments of Provincial Judges who withdraw from reduced service prior to age 75.

Income Continuity as Percentage of Full-Time Salary

	Years of Service					
Age	15 or more	14	13	12	11	10
65	45.0	-	-	-	-	-
66	46.0	46.0	-	-	-	-
67	47.0	47.0	47.0	-	-	-
68	48.0	48.0	48.0	48.0	-	-
69	49.0	49.0	49.0	49.0	49.0	-
70	50.0	50.0	50.0	50.0	50.0	50.0
71	51.0	51.0	51.0	51.0	51.0	51.0
72	52.0	52.0	52.0	52.0	52.0	52.0
73	53.0	53.0	53.0	53.0	53.0	53.0
74	54.0	54.0	54.0	54.0	54.0	54.0

Note The above percentages are increased by approximately 10.5% of full-time salary for OAS and CPP payments, as is the 55% of full-time salary that becomes payable after reduced service until age 75.

APPENDIX II

COVERAGE FOR SICKNESS AND DISABILITY

1. SHORT TERM SICKNESS PLAN (STSP)

This plan is designed to provide income protection for up to six months of continuous or intermittent absence when a Provincial Judge is unable to attend to his duties due to illness or injury.

The Plan provides 100% of salary for 130 working days (i.e. 6 months) for all active Judge.*

A medical certificate will normally be submitted to the Chief Judge for absences of 5 working days or longer.

*The current plan for Provincial Judges provides only 6 days at 100% pay followed by 124 days at 75% pay.

2. LONG TERM INCOME PROTECTION PLAN (LTIP)

This Plan is designed to provide income protection if a Provincial Judge becomes unable to serve due to illness or injury for a continuous period exceeding 6 months.

The LTIP benefit, which commences after a 6 months waiting period from the onset of disability, is 66-2/3% of gross pay reduced by the total of other disability benefits payable under any other plan toward which the Crown makes a contribution (i.e. CPP and WCB benefits). Once this benefit comes into pay it will be increased annually by the same percentage as Judges salaries. This benefit ceases at age 65 when the income continuity payments commence. There would be no change to the portion of the premium paid by the Judges (15%).

Note Coverage under this plan is now extended to all Provincial Judges who are 64-1/2 years of age or less.

APPENDIX III

ONTARIO JUDGES
COMPARATIVE VALUE OF EXISTING AND PROPOSED ARRANGEMENTS
ACTIVE JUDGES

	Proposed Arrangement $m	Existing Arrangement $m
1. Present Value of:		
. Pension Benefits	58.78	54.48
. Death Benefits	4.84	3.63
	63.62	58.11
2. Less Present Value of:		
. Past employee contributions	9.29	10.17
. Future employee contributions	9.47	10.37
	18.76	20.54
3. Net Present Value of Benefits to be financed by Government contributions (Item 1-Item 2)	44.86	37.57
4. Net Present Value of government-financed benefit expressed as a % of future payroll of currently active judges	25.78%	21.59%

Notes:- Based on costings performed by Chief Actuary, Ontario Government.

- Judges appointed at age 35 or earlier assumed to receive PSSF benefits.
- SABA contributions to be refunded to all judges.
- Present value of proposed adjustment to current pensions of retired judges: $4 million.

Ontario

Office of the Minister

Ministry of the Attorney General

416/965-1864

18 King Street East
Toronto Ontario
M5C 1C5

March 6, 1984

Mr. Alan R. Marchment
Chairman
Ontario Provincial Courts Committee
c/o The Guaranty Trust Company of Canada
12th Floor
366 Bay Street
TORONTO, Ontario
M5H 2W5

Dear Mr. Marchment:

Yesterday, on March 5, the Legislature's Standing Committee on Administration of Justice gave clause-by-clause consideration to Bill 100, the Courts of Justice Act. The attached letter from Paul French was delivered to the Standing Committee yesterday afternoon.

I was not aware of Mr. French's concerns until the Standing Committee received his letter and, therefore, I had not had any opportunity to consider his proposals. In addition, it did not seem appropriate to make changes to the composition and operation of the Ontario Provincial Courts Committee without seeking the views of the Committee. Accordingly, at my suggestion, the Standing Committee completed its consideration of Bill 100 without making any changes to section 89, on the understanding that I would request your comments on Mr. French's letter and consider the possibility of amending the legislation before it is given third reading.

I look forward to receiving your comments. Thank you for your consideration of this matter.

Yours very truly,

R. Roy McMurtry
Attorney General

cc: Edward Greenspan, Q.C.
Robert Carman

Encl.

STEPHENS. FRENCH. MCKEOWN
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OUR REFERENCE: Paul J. French

March 2nd, 1984.

Dear Member of the Justice Committee:

Re: Courts of Justice Act
Section 89

I am writing to you in my capacity as counsel to the Provincial Judges Association (Criminal Division) and the Ontario Family Court Judges Association.

I have had the opportunity to directly observe the practical functioning of the Ontario Provincial Courts Committee for almost four years. The purpose in my writing is to draw to your attention certain concerns that I have with respect to Section 89 of Bill 100.

As you may be aware the determination of financial issues affecting Provincial Court Judges has always been a sensitive area. This sensitivity exists by reason of the historical and constitutional position of the Judiciary as forming one of the three divisions into which the power of the state is divided. The Judiciary are recognized as having separate and autonomous power in the Judicial realm, just as truly as do the Executive and Legislative Branches. In recognition of the need to preserve the independance of the Judges in the exercise of those powers, and in recognition of the need to avoid the appearance of affecting that independance through financial matters, there has evolved the Ontario Provincial Courts Committee.

Prior to 1973, the remuneration provided to Provincial Court Judges was negotiated directly with the Attorney General. In recognition of the apparent conflict of those negotiations with the principle of independance of the Judiciary, the Attorney General was relieved of that responsibility and negotiation was then with the Management Board of Cabinet. That process was also found to fit uncomfortably with the principle of Judicial independance and so the mandate was entrusted to The Ontario Provincial Courts Committee. It was created by Order-in-Council dated March 5th, 1980, and empowered to inquire into and make recommendations with

respect to numerous financial issues affecting Provincial Court Judges. I enclose a copy of that Order-in-Council and you will note the broad area of its mandate.

The creation of the Ontario Provincial Courts Committee was an act of the Executive. In order to further enshrine the principle of the independance of the Judiciary it was proposed that the Ontario Provincial Courts Committee become a statutory body reporting to the Legislative Assembly. Thus, An Act Respecting the Benefits of Provincial Judges and Masters was laid before the Assembly on December 1, 1983. I enclose a copy of the explanatory note, the Act, and statement of the Honourable Roy McMurtry with respect to that Act.

The wording of the amendment to The Provincial Courts Act laid before the Assembly in December, 1983, is near identical in form and substance to the present Section 89 of Bill 100.

There have been certain problems with respect to the continuing function of the Ontario Provincial Courts Committee. The within comments are intended to assist you in your consideration of the sections of the Bill dealing with the Committee with the hoped for result that some of those problems might be relieved.

(A) <u>With Respect to Section 89(1)(b)</u>

Section 89(1) of Bill 100 presently reads as follows:

> 89.-(1) There shall be a committee to be known as the Ontario Provincial Courts Committee, composed of three members, of whom,
>
> (a) one shall be appointed jointly by the Provincial Judges Association (Criminal Division), the Ontario Family Court Judges Association and the Provincial Court Judges Association (Civil Division);
>
> (b) one shall be appointed by the Lieutenant Governor in Council; and
>
> (c) one, to be the chairman, shall be appointed jointly by the bodies referred to in clauses (a) and (b).

The current nominee pursuant to Section 89(1)(a), is Edward Greenspan, Q.C. The nominee of the Government pursuant to sub-paragraph (b) is Robert Carman. The Chairman,

appointed by joint recommendation pursuant to sub-paragraph (c) is Mr. Alan Marchment.

I submit that it would be appropriate to amend Section 89(1)(b) so that it might read as follows:

> (b) one shall be appointed by the Lieutenant Governor in Council who is not an employee of, or under contract to the Provincial Government; and

While Mr. Carman is a most able individual, any nominee of the Lieutenant Governor in Council who is at the same time a civil servant must be in an uncomfortable position. While the obligation is on the one hand to bring an independant judgment to bear upon a financial problem, the obligation of such a nominee must, on the other hand, be to avoid any conflict with the wishes of the Executive. The independance of the Committee, and the appearance of the independance of the Committee, would be more completely secured through relieving the nominee of the Government from the possibility of such a conflict. I am sure that, were Mr. Carman himself to be consulted on this issue, he would agree with this suggestion.

(B) With respect to Section 89(2)

Section 89(2) of Bill 100 presently reads as follows:

> (2) The function of the Ontario Provincial Courts Committee is to inquire into and make recommendations to the Lieutenant Governor in Council respecting any matter relating to the remunderation, allowance and benefits of provincial judges, including the matters referred to in caluses 88(b) and (c).

It is respectfull submitted that this sub-paragraph ought to be amended in order that it might read as follows:

> (2) The function of the Ontario Provincial Courts Committee is to inquire into and make recommendations to the Lieutenant Governor in Council annually respecting any matter relating to the remuneration, allowances and benefits of provincial judges, including the matters referred to in clauses 88(b) and (c).

The purpose of this suggested amendment is to hopefully avoid a repetition of the Ontario Provincial Courts Committee failing to make a recommendation upon any urgent matter.

For almost two years now the Ontario Provincial Courts Committee has been considering the matter of appropriate pension arrangements for the Provincial Court Judges. As you may be aware, Judges are typically appointed to the Provincial Court at the average age of 43. In such circumstances it is impossible for them to ever attain full entitlement to a pension under a plan such as the Public Service Superannuation Fund. It is imporatant to provide arragnements for pension sufficient to secure for the Provincial Judges a reasonable income in retirement. This need arises not only in order that the incumbents might be relieved of financial distractions in rendering judgments, but also in order that the Province might continue to attract the best men and women possible to the position.

The present arrangements for a Provincial Court Judge provide retirement income annually of approximately $18,000.00. The current arrangements existing in the County Court provide retirement income of approximately $56,000.00. The current arrangements in Ontario are poorer than the arrangements not only for County and District Court Judges, but also poorer than arrangements existing for almost every other Province in Canada.

The work of the McRuer Inquiry in 1968, that of the Ontario Law Reform Commission in 1973, and that of the Royal Commission on the Status of Pension in 1980, all in one way or another commented upon Judicial Pensions and preceded the work of the Ontario Provincial Courts Committee. Yet, notwithstanding the consideration of this issue for a period of approximately two years, the Ontario Provincial Courts Committee has as yet been unable to render a recommendation to the Government.

The suggested amendment would hopefully impose an obligation on the Committee to deal more speedily with such urgent problems.

(C) <u>With respect to Section 89(3)</u>

Section 89(3) of Bill 100 presently reads as follows:

> (3) The Ontario Provincial Courts Committee shall make an annual report of its activities to the Lieutenant Governor in Council.

It is respectfully submitted that this sub-paragraph should be amended in order that it might provide as follows:

> (3) The Ontario Provincial Courts Committee shall make an annual reports of its activities, <u>and recommendations</u>, to the Lieutenant

Governor in Council, and such report and recommendations shall then stand referred to the Standing Committee on the Administration of Justice.

The purpose of this suggested amendment is to avoid the problem of recommendations of the Committee being ignored. For example, on January 30th, 1981, the Committee made a recommendation with respect to remuneration for Provincial Court Judges. I enclose a copy of it. Delivery of this unanimous recommendation has never been acknowledged by the Government. The proposed changes would provide the hoped for result that recommendations of the Ontario Provincial Courts Committee were at least considered by the Legislative Assembly through its Committee.

I hope that these comments will be of some assistance to you. As I indicated at the outset I have had the opportunity to observe the work of the Ontario Provincial Courts Committee for almost four years. It is no doubt the way of the future in dealing with financial matters affecting the Judges. The changes I have suggested would further refine its statutory arrangements and ensure that it is the best mechanism possible to serve the public.

Yours very truly,

Paul J. French

PJF/d
Encl.

Ontario Provincial Courts Committee

89.—(1) There shall be a committee to be known as the Ontario Provincial Courts Committee, composed of three members, of whom,

(a) one shall be appointed jointly by the Provincial Judges Association (Criminal Division), the Ontario Family Court Judges Association and the Provincial Court Judges Association of Ontario (Civil Division);

(b) one shall be appointed by the Lieutenant Governor in Council; and

(c) one, to be the chairman, shall be appointed jointly by the bodies referred to in clauses (a) and (b).

Functions

(2) The function of the Ontario Provincial Courts Committee is to inquire into and make recommendations to the Lieutenant Governor in Council respecting any matter relating to the remuneration, allowances and benefits of provincial judges, including the matters referred to in clauses 88 (b) and (c).

Annual report

(3) The Ontario Provincial Courts Committee shall make an annual report of its activities to the Lieutenant Governor in Council.

Tabling of recommendations

(4) Recommendations of the Committee and its annual report under subsections (2) and (3) shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days of the commencement of the next ensuing session. *New*.

March 30, 1984

The Honourable R. Roy McMurtry, Q.C.
Attorney General of Ontario
18th Floor
18 King Street East
TORONTO, Ontario
M5C 1C5

Dear Mr. Attorney:

In your letter of March 6, 1984, you requested the views of the Ontario Provincial Courts Committee on a submission made by Paul French to the Legislature's Standing Committee on Administration of Justice. Mr. French's suggestions were contained in a letter dated March 2, 1984, to the Standing Committee. The Ontario Provincial Courts Committee has considered Mr. French's letter and we have the following comments to offer.

Mr. French's first concern related to the composition of the Ontario Provincial Courts Committee. We considered this issue in our March 27, 1984 recommendations to the Lieutenant Governor in Council. For convenience, I set out below the recommendation we made:

> "With respect to the composition of the Ontario Provincial Courts Committee, the Committee recommends that judges and public servants should not be appointed to the Committee. While the appointees of the judges' associations and the government should obviously be familiar with the concerns of those who appointed them, we believe that the public's perception of the Committee's independence would be enhanced by the appointment of persons who are not members of the judiciary or the public service. We see no need to amend the legislation governing the composition of the Committee; our recommendations can be implemented by the appointment practices of the judges' associations and the government."

Mr. French's second suggestion was that the Ontario Provincial Courts Committee should be required to make recommendations annually. We understand the judges' concern that consideration of matters affecting judicial salaries and benefits not be unnecessary delayed.

However, we think it is impractical to legislate artificial time limits on the amount of consideration that can be given to an issue. The development of detailed recommendations concerning a new pension plan for judges, for example, presented a great many extremely complicated issues which we felt deserved extensive consultation with the judges. Consultation of this kind might not be possible if the Committee had to work within artificial time limits.

Although we do not think it is desirable to require recommendations on an annual basis, we note that section 89 of the Courts of Justice Act requires the Ontario Provincial Courts Committee to make an annual report on its activities to the Lieutenant Governor in Council and requires the report to be tabled in the Legislature. This procedure ensures that the public is informed of the progress of the Committee on the issues it is considering. If the Committee has made recommendations, they obviously should be included in the annual report. To clarify this, we suggest that subsection 89(3) of the Courts of Justice Act should require the Committee to make an annual report of its activities and recommendations to the Lieutenant Governor in Council.

Mr. French's third suggestion was that recommendations of the Committee should automatically stand referred to the Standing Committee on Administration of Justice. The question of how the Legislature wishes to deal with recommendations of the Ontario Provincial Courts Committee relates solely to the internal procedures of the Legislature and, therefore, is an issue on which we do not wish to express any views.

We hope these comments are of assistance.

Yours very truly,

Alan R. Marchment
Chairman, Ontario Provincial
Courts Committee

cc: Edward Greenspan, Q.C.
Robert Carman
Paul French